HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26670 of 2006

Dated:02.01.2007

Between:

Ihtesham Hyder Qureshi.

…Petitioner

and

Transmission Corporation of A.P., Limited, and others.

…Respondent

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26670 of 2006

ORDER:

The petitioner is availing power supply from the respondents under LT Category-I (Domestic) with Service Connection No.S 9025181. The petitioner's premises was inspected by the second respondent on 15.11.2006 and it was found that the meter disc was not rotating even though the load is switched on, that the meter was found in tilted condition due to removal of meter fixing screws by the consumer intentionally, and that after rectification, the meter started rotating in normal on the same load. Due to these incriminating points, the second respondent came to a *prima facie* conclusion that the petitioner is guilty of theft of electricity under Section 135 of the Electricity Act, 2003 (for short 'the Act'), and accordingly valued the amount of pilfered energy as Rs.29,277/-, and issued a provisional assessment order dated 04.12.2006. The petitioner was called upon to pay the amount for availing restoration of power supply pending determination of civil liability before the Special Court under Section 154(5) of the Act.

The petitioner is aggrieved by the action of the second respondent in disconnecting the power supply and demanding payment of 50% of the amount of provisionally assessed value of the

pilfered energy. It is the case of the petitioner that even in a case of unauthorized use/theft of energy, respondents have no jurisdiction to disconnect power supply.

At the stage of admission itself, a counter affidavit is filed making reference to the provisions of the Electricity (Supply) Act, 1948, Indian Electricity Act, 1910, and the Act. It is the contention of the respondents that even after coming into force of the new Act, as per Condition 10 of the General Terms and Conditions of Supply (GTCS) it is competent for the respondents to disconnect power supply and demand 50% of the provisionally assessed amount for restoration of power supply.

Learned Counsel for the petitioner placed reliance on an unreported judgment of this Court in W.A.No.452 of 2004, dated 11.03.2004 (**M/s.Mallikarjuna Polishing Industries v. Chief Managing Director, A.P.Transco**) in support of the contention that in the absence of any specific power under the provisions of the Act, the respondents cannot disconnect power supply. **Per contra**, the learned Counsel appearing for the respondents submits that the question now stands referred to a Full Bench. He would urge that as per Condition 10 of GTCS such power is vested in the respondents to disconnect power supply in a case of theft or unauthorized use of electricity.

There is no denial that the correctness of the decision of the Division Bench in W.A.No.452 of 2004 is a subject matter before the Full Bench. However, there is also no denial that the ratio of the Division Bench in **M/s.Mallikarjuna Polishing Industries v. Chief Managing Director, A.P.Transco** (supra) has not be suspended. Therefore, it continues to be a binding authority insofar as this Court is concerned. In W.P.No.21623 of 2006 (**M/s.Tirumala Industries v. Transmission Corporation of A.P. Limited**), I considered this aspect of the matter having regard to the decision of Division Bench in **M/s.Mallikarjuna Polishing Industries v. Chief Managing Director, A.P.Transco** (supra). The Division Bench in **M/s.Mallikarjuna Polishing Industries v. Chief Managing Director, A.P.Transco** (supra) laid down as under.

> …Chapter XII of the new Act deals with the investigation and enforcement. Section 126 provides for the process for making assessment, provisional and final, if on an inspection the equipments, gadgets, machines, devices are found to be tampered with or there is unauthorized use of electricity. **There is no such power, while issuing**

provisional assessment, to forthwith stop or disconnect electricity supply. Provisional Assessment is in the nature of a show cause notice against which the consumer is entitled to have an opportunity of hearing before passing final order of assessment by the concerned authority. As such the notices dated 7.1.2004 will be deemed to have been issued only under Section 126 of the Electricity Act under which there is no authority or power to respondents to discontinue or disconnect the electricity supply or call upon the appellants to pay even part of the provisional assessment amount till final assessment is made. Only on the appellants not complying with the final assessment orders, the respondents can proceed further in the matter and that will also be subject to the appeals to be filed by the appellants. Consequently, we allow the appeals, set aside the impugned order passed by the learned single Judge and allow the writ petitions with a direction that electricity supply to the premises of the appellants shall be restored forthwith and the concerned authority will proceed to pass final order in the facts and circumstances of the case after affording opportunity of being heard to the appellants.

(Emphasis supplied)

In view of the above binding authority I dispose of the Writ Petition giving such directions. The same would apply to this case also.

Therefore, this Writ Petition is disposed of in the following manner.

i) The respondents are directed to restore the power supply to the petitioner immediately without insisting on payment of the half of the provisionally assessed value of the alleged pilfered energy;

ii) It shall be open to the petitioner to compound the allegation/contravention, if so advised;

iii) In case the petitioner fails to compound the contravention, the respondents shall immediately send the case to the Special Court constituted under Section 153 of the Act, in which case, it shall be open to the petitioner to raise all his

grounds before the Special Court.

Needless to point out that the petitioner shall have to pay the reconnection charges before availing power supply. No costs.

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(V.V.S.RAO, J)

02.01.2007

Note: Issue C.C by 04.01.2007,

B/o.

vs